



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: December 9, 2015

To: Robert Best, Chairman, & Members, Planning Board

From: Jillian M. Harris, AICP, Planning & Zoning Administrator

Subject: **John J. Flatley Company (applicant/owner)** – Review for acceptance and consideration of Final Approval of an application for a site plan to construct 240 multi-family residences, clubhouse, and associated parking and drainage improvements, per the requirements of the Flatley mixed use Conditional Use Permit. The parcels are located at # 645, 673, 685, 703 and 707 D.W. Highway in the I-1 (Industrial), Aquifer Conservation and Wellhead Protection Districts. Tax Map 6E, Lots 003-01, 003-03, 003-04, 003-05 & 003-06. ***This item is continued from the June 16, July 21, August 18, September 1, September 15, November 3, and December 1, 2015 Planning Board meetings.***

Background: Please see the June 11, 2015, September 1, 2015 and September 10, 2015 Memos for background information on this application, in addition to background memos provided during 2014 on the entire project during the Conditional Use Permit process. At the October 20, 2015 Planning Board meeting the applicant withdrew proposed amendments to the Conditional Use Permit and therefore phasing is required to adhere to the Development Agreement recorded at the Hillsborough County Registry of Deeds on September 2, 2015.

The applicant has noted that they will be submitting an application to the Zoning Board of Adjustment for a Special Exception to encroach into the 25' no-disturb wetland buffer, as the encroachment would consist of parking, landscaping and a pedestrian way and would be minimal while meeting the design elements that both the applicant and the Planning Board want to see.

The applicant last submitted a revised plan set on September 4, 2015 to address Planning Board comments, previous staff comments and peer review comments. Since that time the applicant has worked to continue to address a majority of the comments and previously recommended conditions of approval and is currently seeking final approval from the Board.

DPW recommends discussing provisions for new development/redevelopment as outlined in the Draft MS4 Permit issued by EPA (attached). The Board may also wish to discuss roadway/driveway design and if it's possible for the proposed road(s) to meet town standards. The Public Works Department and the Fire Department have also recommended that the project should connect to the ROW of Allen Road with a full town standard road or an emergency access road. As this connection is not shown, the Board may wish to discuss it with the applicant.

Completeness: **The Board voted to accept the application on September 15, 2015.**

Waivers: The applicant has not requested any waivers at this time. Staff recommends that the Board consider requiring the following waivers or that the required elements be addressed as a condition of approval:

1. Section 4.05.d – buildings within 200' of the boundaries of the parcel to be subdivided and intersecting roads and driveways within 300' of the subdivision frontage on existing roads;

2. Section 11.05 – parking lot lighting;
3. Section 7.05.D.20.c – driveway width that exceeds 36 ft.

Recommendation: Staff recommends that the Board vote with respect to any requested waivers utilizing the criteria from RSA 674:44:

- Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; **or**
- Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Staff recommends that the Board grant conditional final approval to the application, with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:

1. Final plans and mylars to provide all professional endorsements and be signed by all property owners;
2. A draft copy of any proposed easements and any applicable legal documents to be submitted to the Community Development Department, as applicable, for review and approval by the town's legal counsel (legal review shall be performed at the applicant's expense);
3. Project phasing is to be visually indicated and noted on the plan per Planning Board approval;
4. The applicant shall obtain all necessary state permits (NH DOT Driveway, NH DES AOT, and any other applicable permits), provide copies of the permits to the Community Development Department file, and note the approvals in the notes on the plan;
5. Applicant to receive from the Zoning Board of Adjustment, and add a note indicating a special exception for activity within the 25' no-disturb wetland buffer or to re-design so as to no longer require the exception;
6. The applicant shall address the following comments from the Conservation Commission (as applicable);
 - a. The Commission requests no use of salt or de-icing compounds at the proposed site. This is due the vicinity of the Brook, the Merrimack River, and being in a Wellhead protection area.
 - b. The Commission proposes that only low phosphate, slow release nitrogen fertilizers be used as part of the project. The Commission further recommends that the applicant's contractor considers utilizing a soil testing facility to determine what levels and applications rates may be necessary before doing any application of fertilizes on the site.
 - c. Erosion control and maintenance notes using the word "hay", we prefer all references to hay in the plan set be changed to straw to minimize the introduction of non-native grasses and other plants through seeds often found as part of hay.
 - d. The plans showed a few places where the 25' no-disturb buffer of a wetland may be encroached upon, in general we recommend that not be allowed except for where a current encroachment may be already happening and the project does not increase the impact or increase the severity of the impact.

7. The applicant shall address the following comments from the Public Works Department:
 - a. The project should connect to the ROW of Allen Road with a full town standard road or an emergency access road;
8. The applicant shall address the following comments from the Fire Department (as applicable):
 - a. The Town of Merrimack, Department of Fire Rescue, Office of the Fire Marshal requires (NFPA 1 Chapter 18) that fire department access roads be constructed and maintained so that fire apparatus can effectively operate during an emergency. The location of the access road(s) must provide for positioning of the fire apparatus to allow access to all sides of the structure. Unique building or occupancy conditions may trigger additional requirements from the Office of the Fire Marshal.
 - i. Access to the multi-story buildings is acceptable.
 - ii. There are 2 gravel emergency access roads noted on the plan. These 2 roads are to be graded and maintained to allow emergency access to the railroad track access road east of the development. The emergency access roads should be capable of supporting the weight of fire apparatus and have an approved turn around at the end. Minimum width should be 16 feet and roads should be passable in all weather, including being plowed of snow. These conditions shall be listed on the site plans.
 - b. Fire Department water supply (pressurized hydrants) is required. In keeping with the compliance of state fire codes, NFPA codes and continued practices with other subdivisions and residential complexes within the community the installation of Fire Hydrants on a minimum of an eight inch water main will be required with Fire Hydrants located every 500 feet along all roadways and no more than 250 feet to a driveway as calculated along the new roads starting at the nearest hydrant located on Daniel Webster Highway. The submitted plans do not show any hydrants located on the access road from Daniel Webster Highway. Final drawings showing the locations of the fire hydrants must be submitted to the Fire Marshal's Office for approval.
9. The applicant shall address comments from MVD and provide documentation of a development agreement (as applicable);
10. The applicant shall address the following comments from the Wastewater Division (as applicable):
 - a. A Town of Merrimack Wastewater Permit Application must be completed and approved by the Sewer Inspector/Collection System Manager before final plan can be approved by the Merrimack Wastewater Department. This permit also generates the appropriate sewer connection fees due the town before building permits can be issued;
 - b. Sheet 1: Utility Contacts should include WASTEWATER: Merrimack Wastewater Treatment, 36 Mast Rd, Merrimack, NH 03054, Attn: Ken Conaty, (603)420-1625;
 - c. Sheet 3 &4: Numbers used on existing sewerage manholes are incorrect.

Plan #	Actual#
2723	189
2695	601
2680	602

2645	603
6240	610
5161	611
6683	612
952	613

- d. Sheet 11: Parking Lot Island needs to be redesigned. The existing design shows a drainage and snow storage area on existing manhole #604. Neither can be allowed due to inflow and access issues.
 - e. Sheet 17: Shows several trees planted in the sewer easement-not permitted.
11. The applicant shall verify that all applicable comments from the Town's peer review consultant, CLD, have been satisfactorily addressed;
12. The applicant shall address all applicable comments from the Lower Merrimack Local Advisory Committee (LMRLAC), as part of the NHDES AOT permitting;
13. The applicant shall address the following planning staff technical comments:
- a. Applicant to clarify Note 2 – Sheet 2 to reference Section 2.02.4.C(4) for zoning, pertaining to Section 15 for dimensional requirements for PUD uses including residential;
 - b. Applicant to clarify approved phasing from final CUP development agreement and Master Site Development Plan dated September 1, 2015 on Note 5 – Sheet 2 which references five (5), 48 unit apartment buildings whereas four (4) are approved as part of Phase 1 of the CUP;
 - c. Applicant to clarify Note 7 – Sheet 2 to note compliance as per the CUP approval;
 - d. Applicant to correct typo in Note 9 – Sheet 2 from “pre” to “per” under Community Center Parking;
 - e. Applicant to remove “subsequent” from Note 10 – Sheet 2;
 - f. Applicant to remove misplaced period in Note 15 – Sheet 2;
 - g. Applicant to correct Note 16 – Sheet 2 which should reference Chapter 167 of the Town’s Code of Ordinances (no longer Chapter 412);
 - h. Applicant to include in Note 17 – Sheet 2 which sheet(s) are to be recorded with HCRD;
 - i. Applicant to correct typo in Note 21 – Sheet 2 from “Oni” to “On”;
 - j. Applicant to provide documentation of approval from the Merrimack Conservation Commission and Merrimack Village District on wording of Note 22 – Sheet 2;
 - k. Applicant to add wording “for a mixed use development on” prior to “this site” in Note 24 – Sheet 2;
 - l. Applicant to correct Sheet 15 titled “Landscaping Plan 2” to “Site Lighting Plan 2”;

- m. Applicant to add a note on open space per Section 4.10 on either the Master Site Plan or the Landscape Plan;
- n. Applicant to provide details for full cut-off lighting or to request a waiver as necessary;
- o. Applicant to revise lighting plan to show a maximum uniformity ratio of 4:1 per Section 11.05 or to request a waiver as necessary;
- p. Applicant to review the planting list to determine if recommended varieties from Section 11 can be substituted for similar varieties in the landscaping plan;
- q. Applicant to submit a revised architectural plan specific to the proposed development and no longer titled "Tara Heights" in Nashua, NH.

Staff also recommends that the following general and subsequent conditions be placed on the approval:

1. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
2. All proposed easements and any applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
3. The Applicant shall submit an As-Built Plan prepared by a qualified professional (Professional Engineer or Licensed Land Surveyor) after all units are completed to the Community Development Department prior to the issuance of a Certificate of Occupancy, for the final building (assuming project phasing remains consistent with the CUP and is not amended).
4. The applicant shall address the following comments from the Fire Department:
 - a. As this proposal is for new multi-tenant residential buildings the entire building shall be protected by an approved NFPA-13 compliant fire sprinkler system. (Town of Merrimack Building Zoning Ordinance and Building Code, Section 11) Plans shall be provided to this office for review and approval before a permit can be issued.
 - b. The buildings shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to this office for review and approval before a permit can be issued. Plans must be submitted to the Merrimack Department of Fire Rescue for any revisions and/or changes to the current plan on file and must be reviewed and approved by the Merrimack Department of Fire Rescue, Office of the Fire Marshal. The design and any changes must be fully compliant with local, state and nationally recognized codes. The Fire Marshal reserves the right to require any changes by the Authority Having Jurisdiction (AHJ) or for regulatory compliance at any time.
5. The applicant shall address the following comments from the Wastewater Division (as applicable):
 - a. All new sewerage lines and manholes installed are to be private. This system upon completion will be maintained by the owner not the Town of Merrimack;
 - b. A capacity, management, operation, and maintenance plan shall be in place before any certificate of occupancy will be signed;

- c. All buildings must have an outside backflow preventer (clean check brand or equal) as indicated by Merrimack Sewerage Construction Standards;

Cc: File
Correspondence
John J. Flatley Company, Applicant/Owner

Ec: Fire Captain John Manuele
Kyle Fox, Deputy Director of Public Works/Town Engineer
Ken Conaty & Jim Taylor, Wastewater Division
Ron Miner, Merrimack Village District
Building Official Fred Kelley
Carol Miner, Building Department